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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. [redacted] 9

LUTHER H. REICHELDERFER, HERBERT B. CROSBY AND JOHN C. GOTWALS, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, *Petitioners*,

v.

HENRY I. QUINN, GEORGE J. MUELLER, JR., HENRY ORTH, Jr., et al.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

WILLIAM W. BRIDE,
Corporation Counsel, D. C.

VERNON E. WEST,
ROBERT E. LYNCH,
Of Counsel.

February, 1932.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

Petition.

The Corporation Counsel, on behalf of the Commissioners of the District of Columbia, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Co-

lumbia entered in the above-entitled cause on December 7th, 1931, sustaining the judgment of the Supreme Court of the District of Columbia.

Statement.

The Act of Congress of May 21, 1928, directed the Commissioners of the District of Columbia to sell property owned by it at the corner of 16th and Webster Streets, N. W., theretofore acquired for a fire engine house site and to pay the proceeds into the Treasury of the United States. Said Act of Congress further provided:

> "And the Commissioners are hereby authorized and *directed* to erect a fire engine house, with furniture and furnishings for a fire engine company, at the northwest corner of Sixteenth Street and Colorado Avenue, on property belonging to the United States, and there is hereby set aside for such purpose a plot of ground running north from the junction of Sixteenth Street and Colorado Avenue, as now publicly owned, one hundred (100) feet on Sixteenth Street, thence west at right angles to the street, one hundred and sixty feet (160), thence south at right angles to the line of Colorado Avenue. The balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch Road Northwest, is made available for the purpose aforesaid."

Prior to the commencement of the construction of the aforesaid fire engine house the respondents filed a bill in equity in the Supreme Court of the District of Columbia praying that the District Commissioners be restrained from proceeding with the erection of the said fire engine house. (R. 1). The bill of complaint alleges that respondents owned property used as a residence in the vicinity of 16th Street and Colorado Avenue, the proposed location of the fire engine house, and that their property was in a residential district as defined by the Zoning Regulations of the District of Columbia. The northwest corner of 16th Street and Colorado Avenue is a part of Rock Creek Park, which was established by Act of Congress of February 27, 1890, which Act provided that the said park be "perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park." The bill also alleges that the respondents established their homes relying upon the Zoning Laws and Regulations and the Act of Congress establishing Rock Creek Park.

The petitioners filed an answer (R. 8) substantially admitting the allegations of fact contained in the bill of complaint. A stipulation was entered into by counsel of record (R. 12) admitting that the respondents' predecessor in title was a party to the condemnation proceedings with respect to a tract of land owned by her, a portion

of which was taken for the said Rock Creek Park, and without admitting the materiality of the averments, did not question that respondents relied upon the Zoning Laws and Regulations and the Rock Creek Park Act in establishing their homes; and that the respondents would be subjected only to such noise as is incidental to the normal and usual conduct and operation of a fire engine house.

The court entered a final decree for a perpetual injunction restraining the Commissioners of the District of Columbia and their successors in office from erecting or causing to be erected a fire engine house at the northwest corner of 16th Street and Colorado Avenue. (R. 13). The Court of Appeals sustained the action of the Supreme Court of the District of Columbia.

Question Presented.

The sole question presented is whether or not Congress may establish a fire engine house on property owned by the United States and known as Rock Creek Park.

Specifications of Error to Be Urged.

The Court of Appeals erred:

(1) In holding the District of Columbia Commissioners were not entitled to establish a fire engine house as directed by the Act of Congress.

(2) In permanently enjoining the District of Columbia Commissioners from erecting the fire

engine house as directed by the mandate of Congress.

(3) In holding Congress was without power to change the use of any part of property owned by the United States.

Reasons for Granting the Writ.

The questions involved in this case are of substantial importance to the United States Government and the District of Columbia for the reason that large tracts of land used for park and other purposes owned by the United States Government are situated in the District of Columbia. The denial of the right to establish a fire engine house by the duly authorized authorities may seriously affect the protection of private property, as well as government buildings and parks.

The decision of the Court of Appeals restrains the power of Congress over the District of Columbia.

The right and power of Congress is forever denied to change the use, in whole or in part, of land owned by the United States. The right to adequately safeguard and protect Rock Creek Park by locating a fire engine house in any part of it is denied to Congress.

WILLIAM W. BRIDE,
Corporation Counsel, D. C.

February, 1932.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

There were two opinions by the Court of Appeals. The first reported in 58 App. D. C. 339; and the second in 60 W. L. R. 38.

Jurisdiction.

The final judgment of the Court of Appeals of the District of Columbia was entered on the 7th day of December, 1931. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Statement.

A statement of the facts and of the errors relied on will be found in the petition.

Provisions of Constitution and of Statutes Involved.

Article 1, Section 8, Clause 17 of the United States Constitution provides:

> "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession

of particular states, and the acceptance of Congress, become the seat of government of the United States."

45 Stats. at Large, 667 provides:

"The Commissioners of the District of Columbia are hereby authorized and directed to sell the property at the corner of Sixteenth and Webster Streets, heretofore acquired for a fire engine house site at public or private sale at not less than the purchase price paid therefor by the District of Columbia and pay the proceeds thereof into the Treasury of the United States, to the credit of the District of Columbia; and the Commissioners are hereby authorized and directed to erect a fire engine house, with furniture and furnishings for a fire engine company, at the northwest corner of Sixteenth Street and Colorado Avenue, on property belonging to the United States, and there is hereby set aside for such purpose a plot of ground running north from the junction of Sixteenth Street and Colorado Avenue, as now publicly owned, one hundred (100) feet on Sixteenth Street, thence west at right angles to the street, one hundred and sixty feet (160), thence south at right angles to the line of Colorado Avenue. The balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch Road Northwest, is made available for the purpose aforesaid."

41 Statutes at Large 500.—the Act creating the Zoning Commission.

(Set out in full in appendix).

ARGUMENT.

I.

Congress Was Authorized to Establish a Fire Engine House as an Agency of the Police Power.

The plenary power of Congress over the District of Columbia should not lightly be emasculated by the Courts. The wisdom and discretion of Congress in establishing the fire engine house on a small plot of ground located in Rock Creek Park contiguous to 16th Street, should not be subjected to review by the Courts of the District of Columbia as the necessity for its establishment at the strategic point was a matter for the legislative and not judicial branch of the Government. It may well be that the necessity for the location of the fire engine house at this point was to protect Rock Creek Park, which consists of over 1600 acres, particularly in view of the fire hazards which may exist in such a large tract of land, containing extensive wooded sections with the incidental brush, undergrowth and leaves. A fire commencing in any part of this large tract of land would naturally rapidly spread, not only endangering and destroying extensive portions of the Park but also subjecting surrounding private property to serious danger, if not loss.

This Court has frequently held that the police power of the sovereign is not susceptible of defini-

tion, for, as was held in the case of Mugler *vs.* Kansas, 123 U. S. 623, it is a continuing one, and a vested right may in the future, because of changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good. The Court, in speaking of its limitations, in the case of the District of Columbia *vs.* Brooke, 214 U. S. 138, said:

> "In the case at bar we are dealing with an exercise of the police power, one of the most essential powers, at times most insistent, and always one of the least limitable of the powers of government."

The police power may be retroactive in effect, and may work a severe hardship on individuals when properly invoked. One of the most striking illustrations of this is shown by the case of Hadacheck *vs.* Sebastian, 239 U. S. 394. The plaintiff owned a tract of land worth $800,000 for use in the manufacture of brick. He had been extracting clay and manufacturing brick on the premises for a number of years when a city ordinance prohibited the manufacture of brick within an area in which his land was situated. It was not profitable to remove the clay to another part of the city for the manufacture of brick and his land was reduced in value to $60,000. The Court at page 410, said:

"It is to be remembered that we are dealing with one of the most essential powers of government, one that is the least limitable. It may, indeed, seem harsh in its exercise, usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily. *A vested interest cannot be asserted against it because of conditions once obtaining. To so hold would preclude development and fix a city forever in its primitive conditions. There must be progress and if in its march private interests are in the way they must yield to the good of the community.*" (Italics ours).

See also:

Legal Tender case, 12 Wall. (U. S.) 472.
Reinman vs. Littlerock, 237 U. S. 171.

The power of the several states on this question was determined in Atlantic Coast Line *vs.* Goldsboro, 232 U. S. 548. The Court said:

"For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; *and that all contract and property rights are held subject to its fair exercise.* Slaughter-House Cases, 16 Wall. 36, 62; Munn *v.* Illinois, 94 U. S. 113,

125; Beer Co. *v.* Massachusetts, 97 U. S. 25, 33; Mugler *v.* Kansas, 123 U. S. 623, 665; Crowley *v.* Christensen, 137 U. S. 86, 89; New York & R. R. Co. *v.* Bristol, 151 U. S. 556, 567; Texas &c, R. R. Co. *v.* Miller, 221 U. S. 408, 414, 415. And the enforcement of uncompensated obedience to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law. Chicago, Burlington &c, R. *v.* Chicago, 166 U. S. 226, 255; New Orleans Gas Co. *v.* Commissioners, 197 U. S. 453, 462; C. B. & Q. Ry. *v.* Commissioners, 200 U. S. 561."

The same doctrine is enunciated in Chicago & Alton R. R. *vs.* Tranbarger, 238 U. S. 67.

If the foregoing can be said of the police power of a State, certainly there can be no question as to the exclusive jurisdiction of Congress to legislate over the District of Columbia, especially in the interest of fire protection for the safety and welfare of the public.

There is a presumption of validity in the enactment of the law by legislature. The good faith of Congress or the Commissioners has not been questioned. Thus in Munn *vs.* Illinois, 94 U. S. 113, at page 132, the Court said:

> "For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was

> passed. For us the question is one of propriety, not of expediency. If no state of facts could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the State. But if it could we must presume it did. Of the propriety of legislative interference, within the scope of legislative power, the legislature is the exclusive judge."

Later (1909), in the case of Home Telephone Co. *vs.* Los Angeles, 211 U. S. 265, the Court said:

> "It is a well settled rule of constitutional exposition that if a statute may or may not be, according to the circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed."

See also:

Sullivan *vs.* City of Shreveport, (1919), 251 U. S. 171.

In the case of L'Hote *vs.* New Orleans, 177 U S. 587, the City of New Orleans fixed a certain area as the "Red Light District" and prohibited any prostitute dwelling elsewhere in the city. Thereafter, the city changed the boundaries of the district, excluding a part of the former district and including additional territory in another direction. Within the newly defined limits were located a reputable hotel, a residence, a church and a Sunday school house, owned by petitioners who

alleged that their property was greatly depreciated or rendered wholly useless for the purposes for which it was built. The Court, in its opinion, (page 597) adopts the following from 1 Dillon Mun. Corp. 4th ed., Sec. 141:

> "Laws and ordinances relating to the comfort, health, convenience, good order, and general welfare of the inhabitants are comprehensively styled 'Police Laws or Regulations.' It is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury it is either *damnum asbque injuria*, or, in the theory of the law,, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure."

The United States possesses full and unlimited jurisdiction both of a political and municipal nature over the District of Columbia. Shoemaker *vs.* U. S., 147 U. S. 300.

> "The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the national government, has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the district

> all legislative powers that the legislature of a state might exercise within the state; and may vest and distribute the judicial authority in and among the courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States."
>
> Capital Traction Co. *vs.* Hof., 174 U. S. 5.

In legislating for the District of Columbia, Congress remains the legislature of the Union, and its acts are the acts of the United States. There is no division here between powers of state government and powers of general government; all these powers are alike vested in the federal government. Washington Aqueduct (1855) 7 Op. Atty. Gen. 115.

The supreme legislative body of the District of Columbia is Congress. The subordinate legislative powers of a municipal character which may be lodged in the city corporations or in the district corporation, do not make these bodies sovereign. Metropolitan R. Co. *vs.* D. C. 132 U. S. 9.

In Nectow *vs.* Cambridge, 277 U. S. 183, the Court said:

> "We quite agree with the opinion expressed below that a court should not set aside the determination of public officers in such a matter unless it is clear that their action 'has no foundation in reason and is a mere arbitrary or irrational exercise of power having no sub-

> stantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense.'"

A case directly in point is that of Cincinnati *vs.* Wegehoft, 119 Ohio 136; 162 N. E. 389 (June, 1928), wherein the Court of Appeals of Ohio held that the city of Cincinnati was well within its power in establishing a fire engine house at a particular point despite the provisions of the zoning regulations or the injury to private property. The decision of the six justices was unanimous in holding that the construction and operation of a fire engine house was not a nuisance, and said:

> "* * * The right, and the duty as well, to exercise good faith in the furtherance of good municipal government, cannot be enjoined by the Courts because there exists a possibility that such power may be abused by the duly elected or appointed representatives of the city. * * *
>
> "The charge is that it is not necessary for the city to operate the engine house at the particular point chosen by the city and it is averred that it would serve equally well the purposes of the city if it were located at any one of the several places designated by the defendant in error, and that, if so located it would do less damage to the property of the defendant in error, which is only another way of saying that the Court should substitute its judgment for that of the chosen representatives of the city in the matter of locating the city's municipal buildings."

II.

The Use of Rock Creek Park Was Not Diverted.

The Court of Appeals in its first opinion, 58 App. D. C 339, devotes a large space to the discussion of the alleged diversion of Rock Creek Park for a different use than that originally contemplated. It is submitted the establishment of a fire engine house on the park property and occupying a lot 100 feet by 160 feet at the intersection of two streets is not a diversion of a public park consisting of over 1600 acres, particularly where the engine house is to be located at the intersection of two public streets. Instead of a diversion or change of use of Rock Creek Park, Congress was enacting legislation to protect and safeguard the park in order that it could be used and enjoyed by the entire public.

The Court of Appeals quoted from and placed great reliance upon the case of Douglas *vs.* Montgomery, 118 Ala. 509. That case, however, is not in point because it appears from the decision that a public park was completely and entirely turned over to a railroad company by the city council. There is no analogy in the Douglas case, supra, to the one at bar when we consider that the fire engine house was to occupy a lot 100 feet by 160 feet in a park of land comprised of over 1600 acres.

There is no justification in the Record for the statement contained in the opinion of the Court of Appeals that the fire engine house could have been established at a more strategic point two blocks distant from the present site, outside of the residential district, and with little or no property damage to any one.

The case of Cincinnati vs. White, 6 Pet. 438, 8 L. Ed. 452, cited by the Court of Appeals in its opinion, likewise is not in point for it appears from a careful examination of the case that the original owners of property had dedicated a portion of the same adjacent to the water front of the city of Cincinnati, as a common for the use and benefit of the town forever. Subsequently the legal title to the land became vested in the plaintiff who sought to recover the land so dedicated for public use. There again the use of the entire property was attempted to be diverted. The Court held there was an estoppel in pais which precluded plaintiff from recovering the land so dedicated. In the case at bar there was no allegation that the erection of a fire engine house would have destroyed or impeded the respondents' right to the use of the park. The United States owns Rock Creek Park by virtue of the action of Congress, yet the Court held that Congress was powerless to direct the Municipal authorities to establish a fire engine house in the said park.

III.

The Zoning Regulations of the District of Columbia Do Not Control.

The contention that respondents' property was located in a residential zone is not sufficient to prevent the establishment of a fire engine house and this is principally true because a residential zone may be of such a large size that the public safety and protection of both public and private property may necessitate and warrant the establishment of a fire engine house within the area.

There is no allegation in the bill of complaint that Rock Creek Park is located in a residential use district. It is submitted that the fact that respondents' property is in a residential district is not sufficient to warrant the granting of an injunction preventing the erection of a fire engine house either in the residential use district or on government property adjacent thereto.

The Zoning Regulations were made pursuant to the authority of Congress. Congress if it so desires can change or alter zoning laws or regulations. Any subsequent enactment carrying out this policy, it is submitted, is a valid exercise of the inherent power of Congress to legislate for the District of Columbia.

CONCLUSION.

The writ of certiorari should be granted.

Respectfully submitted,

WILLIAM W. BRIDE,
Corporation Counsel, D. C.

VERNON E. WEST,
ROBERT E. LYNCH,
Of Counsel.

February, 1932.

ZONING ACT.

(Act of March 1, 1920, 41 Stat. 500)

An act to regulate the height, area, and use of buildings in the District of Columbia and to create a Zoning Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to protect the public health, secure the public safety and to protect property in the District of Columbia there is hereby created a Zoning Commission, which shall consist of the Commissioners of the District of Columbia, the officer in charge of public buildings and grounds of the District of Columbia, and the Superintendent of the United States Capitol Building and Grounds, which said commission shall have all the powers and perform all the duties hereinafter specified and shall serve without additional compensation. Such employees of the government of the District of Columbia as may be necessary to carry out the purposes of this act shall be assigned to such duty by the Commissioners of the District of Columbia without additional compensation.

There is hereby authorized for the expenses of said commission, including the employment of expert services and all incidental and contingent expenses, a sum not to exceed $5,000, payable one-half out of any money in the United States Treasury not otherwise appropriated and the other half out of the revenues of the District of Columbia.

SEC. 2. That within six months after the passage of this act and after public notice and hearing as hereinafter provided, the said commission shall divide the District of Columbia into certain

districts, to be known, respectively, as height, area, and use districts, and shall adopt regulations specifying the height and area of buildings thereafter to be erected or altered therein, and the purposes for which buildings and premises therein may be used: *Provided*, That such regulations may differ in the various districts: *Provided further*, That the permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of that district by the act of Congress approved June 1, 1910, and amendments thereto, regulating the height of buildings in the District of Columbia: *And provided further*, That no such districts shall be established, nor shall any regulations therefor be adopted, nor shall the height, area, or use of buildings to be erected therein be prescribed until said commission has afforded persons interested an opportunity to be heard at a public hearing as hereinafter provided: *And provided further*, That in residence districts the usual accessories of a residence located on the same lot including the office of a physician, dentist, or other person, and including a private garage containing space for not more than four automobiles, shall not be prohibited.

SEC. 3. That wherever, under the provision of this act, it is required that a public hearing shall be held, notice of the time and place of such hearing shall be published for not less than ten consecutive days in one or more newspapers or general circulation printed and published in the District of Columbia; and such public hearing may be adjourned from time to time: *Provided*, That if the time and place of the adjourned meeting is publicly announced when the adjournment is had,

no further notice of such adjourned meeting need be published.

SEC. 4. That after the public hearing herein provided for shall have been concluded, said commission shall definitely determine the number and boundaries of the district which it is hereby authorized and directed to establish, and shall specify the height and area of the buildings which may thereafter be erected therein, and shall prescribe the purposes for which such buildings thereafter erected may or may not be used. Said districts so established shall not be changed except on order of said commission after public hearing. Said commission may initiate any changes, or they may be initiated upon the petition of the owners affected. Where the proposed change is to add a contiguous area to a use, height, or area district, the owners of at least 50 per centum of the street frontage proposed to be changed must join in the petition: *Provided*, That if the frontage proposed to be changed is not a contiguous area, the owners of at least 50 per centum of a frontage within the area not less than three blocks in length must join in such petition before it may be considered by said commission. No such change shall be made, either by said commission on its own motion or upon such petition, except with the unanimous vote of said commission, if the owners of at least 20 per centum of the frontage proposed to be changed protest against such change.

SEC. 5. That said commission is authorized and empowered to make such orders and adopt such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of this act: *Provided*, That no order or regulation so adopted shall re-

quire any change in the plans, construction or designated use of (a) a building for which a permit shall have been issued, or plans for which shall be on file with the inspector of buildings of the District of Columbia at the time the orders or regulations authorized under this act are promulgated; or (b) a permit for the erection of which shall be issued within thirty days after promulgation of the orders or regulations authorized or adopted under this act and the construction of which in either of the above cases shall have been diligently prosecuted within a year from the date of such permit and the ground story framework of which, including the second tier of beams, shall have been completed within said year, and which entire building shall be completed according to such plans within two years of the date of the promulgation of such orders or regulations; or (c) prevent the restoration of a building partially destroyed by fire, explosion, act of God or the public enemy or prevent the continuance of the use of such building or part thereof as such use existed at the time of such partial destruction, or prevent a change of such existing use except under limitations provided herein in relation to existing buildings and premises: *Provided further*, That no frame building that has been damaged by fire or otherwise more than one-half of its original value shall be restored within the fire limits as provided by the building regulations of the District of Columbia; or (d) prevent the restoration of a wall declared unsafe by the inspector of buildings of the District or by a board of survey appointed in accordance with an existing law or regulation.

SEC. 6. That any lawful use of a building or premises existing at the time of the adoption of orders and regulations made under the authority

of this act may be continued, although such use does not conform with the provisions hereof or with the provisions of such orders and regulations; and such use may be extended throughout the building, provided no structural alterations, except those required by law or regulation, is made therein and no new building is erected. Where the boundary line of any use district divides a lot in a single ownership at the time of the adoption of orders and regulations under the authority of this act, the commission may permit a use authorized on either portion of such lot to extend to the entire lot, but not more than twenty-five feet beyond the boundary line of the use district.

SEC. 7. The maps of the districts established by said commission and copies of all orders and regulations as to the height and area of buildings to be erected therein and as to the uses to which such buildings may be lawfully devoted, and copies of all other official orders and regulations of the commission shall be filed in the office of the Engineer Commissioner of the District of Columbia. Copies of all orders and regulations shall be published in one or more newspapers printed in the District of Columbia for the information of all concerned.

SEC. 8. That it shall be unlawful to use or permit the use of any building or premises or part thereof hereafter created, erected, changed, or converted wholly or partly in its use or structure until a certificate of occupancy shall have been issued by authority of said zoning commission.

SEC. 9. That buildings erected, altered, or raised, or converted in violation of any of the provisions of this act or the orders and regulations made under the authority therof are hereby declared to be common nuisances; and the owner or person in charge of or maintaining any such buildings, up-

on conviction on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not more than $100 per day for each and every day such nuisance shall be permitted to continue and shall be required by said court to abate such nuisance. The corporation counsel of the District of Columbia may maintain an action in the Supreme Court of the District of Columbia in the name of the District of Columbia to abate and perpetually enjoin such nuisance.

SEC. 10. That the Commissioners of the District of Columbia shall enforce the provisions of this act and the orders and regulations adopted by said Zoning Commission under the authority thereof, and nothing herein contained shall be construed to limit the authority of the Commissioners of the District of Columbia to make municipal regulations as heretofore: *Provided*, That such regulations are not inconsistent with the provisions of this law and the orders and regulations made thereunder. In interpreting and applying the provisions of this act and of the orders and regulations made thereunder they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience, and general welfare. This act shall not abrogate or annul any easements, covenants, or other agreements between parties: *Provided, however*, That as to all future building construction or use of premises where this act or any orders or regulations adopted under the authority thereof impose a greater restriction upon the use of build-

ings or premises or upon height of building, or require larger open spaces than are imposed or required by existing law, regulations, or permits, or by such easements, covenants, or agreements, the provisions of this act and of the orders and regulations made thereunder shall control.

SEC. 11. That all laws, or parts of laws and regulations in conflict with the provisions of this act are hereby repealed.

Approved March 1, 1920.